

REMARKS/ARGUMENTS

In the Final Office Action dated December 8, 2004, the Examiner 1) withdrew claims 9-12 from consideration; 2) rejected claims 6-8 under 35 U.S.C. § 112, second paragraph for being indefinite; 3) rejected claim 6 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 1,033,448, issued to *Mueller*; 4) rejected claims 6-8 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,109,824, issued to *Annès* in view of U.S. Patent 81,266, issued to *Finnegan*; and rejected claim 6-8 under 35 U.S.C. § 103(a) as being unpatentable over *Annès* in view of U.S. Patent 4,255,909, issued to *Soderstam*. In response, Applicant files a Request for Continuing Examination, cancels claims 9-12, amends claim 6, and presents the following remarks.

Rejections under 35 U.S.C. § 112, second paragraph

Claim 6 has been amended to more clearly define the feature of the horizontal wall of the upper portion of the frame, whereby it serves to transmit to the ground forces directly applied to the frame, such that the frame is supported by the ground. Claims 6 has been further amended to more clearly define the vertical and angular movements of the frame, and to specify that the tubular section remains at its same position when the frame moves.

Rejections under 35 U.S.C. § 102(b)

Claim 6 was rejected under 35 U.S.C. § 102(b) as being anticipated by *Mueller*. Claim 6 has been amended to include, among other limitation, that the frame be "free to move vertically along an external wall of the tubular section as a result of the expansion of the ground occasioned

by the frost or as a result of settling of the surrounding ground," that "the lower portion of the frame has an inclined wall which allows the frame to move angularly in any direction relative to the axis of the tubular section as a result of differential settling of the surrounding ground or as to follow the slope of the ground," and that "the tubular section remains at its same position during vertical or angular movement of the frame." *Mueller* does not teach or disclose any of these limitations.

With respect to the above mentioned limitations, *Mueller* clearly does not teach a frame that is moveable relative to a tubular section. For example, if the ground surrounding the structure of *Mueller* would expand (such as when frozen) the frame (10) will raise, and because the upper extremity of the tubular section (16) is bent and seated on shelf (14), the tubular section will be pulled up by frame (10). Pulling up of tubular section (16) will create a void between the tubular section and the surrounding ground, causing loss of compaction in the surrounding ground and support for frame (10). Further, movement of tubular section (16) will also place stress on the junction between the tubular section and discharge opening (18). Thus it is clear that *Mueller* does not contemplate a system where the frame (10) is moveable relative to tubular section (16).

As explained on page 2 of *Mueller*, tubular section (16) makes a tight joint with shelf (14) of frame (10) by way of solder (17). *Mueller*, pg. 2, lines 19-21. As *Mueller* teaches a tight, soldered joint between the tubular section (16) and the frame (10), the frame (10) of *Mueller* would not be able to incline relative to the tubular section (16) in response to expansion or settling of the surrounding ground. Because *Mueller* does not teach or disclose a frame that is moveable relative to the tubular section, *Mueller* does not anticipate claim 6.

Rejections under 35 U.S.C. § 103(a)

Claims 6-8 were rejected claims under 35 U.S.C. § 103(a) as being unpatentable over *Annès* in view *Finnegan*, and over *Annès* in view of *Soderstam*.

Claim 6 has been amended to include that the tubular section remains at its same position during vertical or angular movement of the frame. Claim 6 is directed to a self-leveling system which comprises a tubular section and a frame having an upper portion and a lower portion. The frame is free to displace vertically and angularly, and is capable of sliding along an external wall of the tubular section. The lower portion of the frame has an inclined wall which allows the frame to be capable of positioning itself at an angle relative to the axis of the tubular section when the ground moves. Thus, the frame of the invention adjusts itself naturally upon movement of the ground, while the tubular section does not move.

This feature of the applicant's system is not found in the system disclosed in *Annès*. Indeed, since the frame (3) and the tubular conduit (9) of *Annès* are a one-piece structure, the frame alone cannot move to adjust itself. Also, contrary to the Examiner's assertion, because of the integral, one-piece, construction of the frame and tubular section of *Annès*, vertical movement extending the length of the tubular section is not possible. The tubular conduit would also have to move angularly, and since soil around it is compacted, this would not be possible. Even if the teachings of *Finnegan* were applied to the system according to *Annès*, namely sizing the lower portion (5) to easily slip over a manhole piece, the angular movement of the resultant system would still not be possible. Indeed, in the system of *Annès*, the tubular section must be installed vertically and it is not possible to include the frame relative to the axis of the cylindrical base 6.

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The arguments outlined above in reference to the rejection based on *Annès* and *Finnegan* apply equally to the obviousness rejection over *Annès* in view of *Soderstam*. It is submitted that if the feature of the *Soderstam* patent indicated by the Examiner, namely the tubular section (6) being disposed within the lower portion (5) of the frame, was applied to *Annès*, the resulting frame would still not be capable of undergoing angular movement.

Allowance of claims 6-8 is respectfully requested. If the Examiner believes that a telephonic interview would be beneficial, the Examiner is invited to contact the undersigned at the number listed below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Derek V. Forinash', is written over a horizontal line.

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